Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform for	)	CC Docket 98-77
Incumbent Local Exchange	)	
Carriers Subject to	)	
Rate-of-Return Regulation	)	

Reply Comments of General Communication, Inc.

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September 17, 1998

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Reply Comments of General Communication, Inc.

General Communication, Inc. (GCI) hereby submits reply comments in response to the Notice of Proposed Rulemaking (Notice)[1] issued in this matter. In their comments, most incumbent local exchange carriers (ILECs) request that the Commission should move slowly toward access reform for rate-of-return ILECs. They note that universal service and access reform must occur at the same time. However, they also request that rate-of-return ILECs should be given pricing flexibility now and the ability to deaverage their costs in their study areas to meet competition. They further argue that they do not possess market power for access. For reasons outlined below, the Commission should not grant these requests. The Commission should move forward on access reform and universal service. In the interim, the Commission should make clear that the current access charge and universal services rules are specific and predictable as to rate-of-return ILECs and encourage competition in all segments of the local market, including markets served by

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[1] Access Charge Reform for ILECs Subject to Rate-of-Return Regulation, FCC 98-101, released June 4, 1998.

rural telephone companies (RTCs).

The Commission correctly stated in the Notice "that our mandate from Congress directs us to foster the delivery of the benefits of competition to consumers throughout the country, and not only to those living in the most densely populated areas . . ."[2] The ILECs plead on one hand that rate-of-return ILECs do not face competition and on the other the need for pricing flexibility and deregulation because of potential competition, while continuing to stress that they must be compensated for all of their costs. GCI continues to urge the Commission to adopt the proposed access reform for rate-of-return ILECs.

GCI provides competitive long distance service in Alaska and competitive local exchange service in Anchorage in competition with Anchorage Telephone Utility (ATU). However, competition for local service in Anchorage, and especially for access services, has been constrained. ATU has constructed many delays in implementing its obligations under the Telecommunications Act of 1996 (Act) and the interconnection agreement it signed with GCI pursuant to the Act. The Commission should ensure that effective competition exists in the switched access market and the local exchange market overall before allowing the rate-of-return ILECs any deregulatory actions.

I. Any Deregulatory Actions Must Follow Effective Competition

Many of the ILECs argue that they need pricing flexibility to react to competition that may occur in the future. The Commission must remember that regulation was created in a monopoly environment

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[2] Id paragraph 1.

to protect consumers from the business practices of a monopolist. It is second best to competition. But it must exist until effective competition exists. To ensure that competition can eventually replace regulation, the Commission must be very careful in granting any deregulatory measures and look at these requests on a case by case basis and evaluate the effect on developing a true competitive environment in each situation.

The Commission should not implement pricing flexibility for these ILECs until there is actual and real competition. The mere existence of an interconnection agreement does not signify true and real competition. While an agreement certainly opens up the possibility of competition developing, it does not happen overnight.

For example, ATU, the largest ILEC in Alaska and the only ILEC facing any sort of competition,[3] has made such a request.[4] GCI has opposed because competition is only beginning to emerge in the

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[3]The Alaska Public Utilities Commission (APUC) did not lift the rural exemption for companies operating in Fairbanks, the second largest city in Alaska, and Juneau, the state capitol. The APUC noted that universal service and access reform must occur on both the federal and state level before the rural exemption could be lifted. In the Matter of the Petition by GCI Communication Corp. for Termination of the Rural Exemption for TUNI, Inc., Docket U-97-144, Order No. 2, dated January 8, 1998; In the Matter of the Petition by GCI Communication Corp. for Termination of the Rural Exemption for TUA, Inc., Docket U-97-143, Order No. 2, dated January 8, 1998; and, In the Matter of the Petition by GCI Communication Corp. for Termination of the Rural Exemption for PTI Communications of Alaska, Inc., Docket U-97-82, Order No. 2, dated January 8, 1998.

[4]ATU Telecommunications Request for Waiver of Section 69.106(b) and 69.124(b)(1) of the Commission's Rules, CCB/CPD 98-40, dated June 22, 1998.

Anchorage market. However, due to the illegal acts, meaningful competition is being delayed and thwarted by ATU. ATU has participated in the following activities, which are contrary to the goals of the Act: (1) inadequate network trunking between ATU's and GCI's network to fulfill the demand of both local and access competition; (2) inadequate access to ATU's operational support system: (3) non-payment for shared access; (4) non-payment for reciprocal compensation for local traffic; and, (5) lack of network notification. These issues are highlighted below.

A. Network Trunking

GCI has constructed its own facilities to compete head to head with ATU for local exchange and access services. In that effort, GCI has constructed a fiber ring around Anchorage to serve its local and long distance customers at a cost of over $15 million. Unfortunately, GCI has been unable to fully utilize its fiber facility because ATU refused for many months to provision interconnecting trunks from ATU facilities to the GCI fiber thereby stopping GCI from being able to control its own costs. Without these trunks there is no competition in the switched access market and none can develop. Under the current scenario, ATU is requiring GCI to interconnect at it long distance point of presence (POP) with ATU. GCI would obviously prefer to use its own local exchange facilities and interconnect solely with ATU through GCI's local exchange carrier to complete all long distance calls. To accomplish this, GCI needs trunking capacity between its local exchange carrier and ATU. Then, the two local exchange carriers

could work out an arrangement to interconnect and share access as appropriate.[5] Until this scenario is implemented, there will be no meaningful competition for switched access services in Anchorage.

GCI has had trunk orders pending at ATU for many months which have been delayed repeatedly because of ATU intransigence. First ATU stated that they did not have the equipment to terminate the trunks, nor did they have the money available in the budget to purchase the equipment. GCI then offered ATU a $220,000 interest free loan to purchase the equipment with payback in foregone rates over a two year period. ATU refused the loan stating that they did not like the idea of a loan. However, they stated that they would accept a gift of $220,000.[6] Finding this unreasonable, GCI then offered to purchase and maintain the equipment at the GCI collocated facilities and hand off trunks at a less efficient DS-1 level (requiring no equipment purchase for ATU) if ATU would agree to bill GCI at the virtual DS-3 rate contained in the interconnection agreement for local traffic only.[7]

In a related equipment issue involving tie cables that are near exhaustion, ATU accepted GCI's offer to buy and install the

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[5]While providing the trunking capacity would allow GCI to carry the calls through its local exchange carrier, access competition would still be hampered since ATU has contested access charges on all calls since competition began.

[6]By receiving a gift of the money instead of a loan for the equipment, ATU would charge GCI transport rates for GCI traffic flowing over the equipment which had been purchased with money from GCI.

[7]Without purchasing equipment, ATU can only handle trunks at the DS-1 level. GCI requested that it be charged at the lower DS-3 level since it is capable of offering DS-3 level trunks to ATU.

necessary equipment and agreed to an installment schedule.[8] However, ATU continues to refuse to commit to billing GCI at the DS-3 for exchange access traffic even through this arrangement was made at ATU's insistence. These delays have cost GCI over $300,000 in the last six months. This has virtually stopped access competition in its tracks.

B. Inadequate Access to ATU's Operational Support System

In the interconnection agreement, ATU agreed to give access to the "systems, including the necessary hardware, software and databases, used in the ordering, provisioning, maintenance, testing, billing and updating of other network databases. See Exhibit I."[9] The agreement further fleshes out the definitions and support system that ATU will follow in providing GCI with access to its OSS. The Alaska Public Utilities Commission (APUC) has enacted rules that require ATU to transfer local service customers from ATU to GCI within 7 working days after ATU receives a valid order for service.[10] GCI has had up to over 300 orders for residential customers pending for more than 7 days.[11] This is particularly glaring due to the fact that up until recently, GCI was paying contract employees at ATU large sums of money (approximately

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[8]GCI is wary of the schedule since every other deadline established by ATU in the past has been missed.

[9]GCI/ATU Interconnection Agreement, page 2.

[10]See 3 AAC 53.290(g).

[11]ATU has been working on the backlog, but they are still not current. The only way to resolve these issues is to establish an electronic interface between the two companies.

$350,000 per month) to have ATU employees dedicated to processing GCI orders. This is in addition to the non-recurring charge paid by GCI for these switchovers to occur. In essence, GCI was paying twice for one service to be performed and ATU is behind in completing the order processing GCI has repeatedly tried to work with ATU to resolve these problems. The backlog and delay has caused GCI great harm in the marketplace. GCI has signed up many customers for local service. However, most customers are frustrated by the amount of time it takes for the switchover to occur. Numerous customers have consequently cancelled service with GCI. Further, GCI customer service representatives have had to deal on a daily basis with complaints from these customers. This severely impacts GCI's reputation in the marketplace.

To alleviate these issues, GCI has repeatedly asked ATU to discuss completion of an electronic interface. However, the system currently being used by ATU could not be upgraded to perform these services. ATU has apparently purchased another system.[12] ATU is not working with GCI to provide a workable electronic solution. The Commission has used the 271 process to hold the RBOCs to the required OSS interface. The Commission should not allow ATU or any other rate-of-return ILEC pricing flexibility until the ILEC has established a workable electronic OSS interface with competitive LECs so that the disparity to provide service to CLECs and itself will be eliminated.

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[12]GCI has not been informed of the operational details of this purchase as required by the network notification rules. This issues is discussed more fully below.

C. ATU is Not Paying Reciprocal Compensation

The arbitrated interconnection agreement of GCI and ATU calls for reciprocal compensation to be paid for local calls exchanged between the networks. ATU has not paid GCI any reciprocal compensation for any local calls. They have also pleaded that internet calls are not local in nature, contrary to Commission policy. In its recent access charge filing, ATU confirms that it is mischaracterizing Internet minutes.[13] Internet service providers purchase business lines from a local tariff. Under the separations rules, the traffic, costs and revenues must follow the jurisdiction where the service is tariffed. The separations manual is very specific. Pursuant to the glossary of terms under Part 36 of the Commission's rules, separations is defined as "the process by which telecommunications property costs, revenues, expenses, taxes, and reserves are apportioned among the operations" and operations is defined as "the term denoting the general classifications of services rendered to the public for which separate tariffs are filed, namely exchange, state toll and interstate toll." Therefore, the "costs, revenues, expenses, taxes and reserves" must follow the appropriate tariff. The business lines provisioned for Internet Service providers (ISPs) are sold under the local tariff. It is not tariffed at the FCC. Under separations, the revenues, costs, and minutes must fall in the same place. The Separations Manual further states that "the fundamental

[13]See GCI's Petition to Reject or in the Alternative to Suspend and Investigate, ATU 1998 Annual Access Filing, Transmittal No. 97, filed June 29, 1998.

basis on which separations are made is the use of telecommunications plant in each of the operations"[14] and that the costs are apportioned among operations and "amounts of revenues and expenses assigned each of the operations" (i.e., each of the tariffs)"are identified as to account classification." [15]

Under current rules, ISPs or enhanced service providers (ESPs) are treated as end users. These end users pay for "local business lines for access for which they pay local business rates and subscriber charges."[16] The Commission has recently affirmed this policy in its Access Reform proceeding.[17] ATU has refused to recognize that Internet traffic is local under the separations rules and has refused to pay GCI reciprocal compensation for this traffic pursuant to the ATU-GCI interconnection agreement.[18]

D. ATU is Not Sharing Access Revenue With GCI

Pursuant to Commission order, incumbent local exchange carriers (ILECs) must share access revenue with a competitive local exchange carrier (CLEC) when the carriers jointly complete a toll call. GCI is providing local service to its customers and completes the toll call to GCI customers. ATU has withheld access payments due to GCI for over a year and only recently made a

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[14]47 CFR Section 36.1(c).

[15]47 CFR Section 36.1(g).

[16]Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2635 (1986).

[17]Access Charge Reform, 11 FCC Rcd 21354, 21478-80 (1996).

[18]GCI/ATU Interconnection Agreement, page 1 and Exhibit B.

partial payment.

E. Network Notification

ATU has not given proper notice to GCI for any network changes. Pursuant to the Commission rules and the GCI-ATU interconnection agreement, ATU is obligated to provide GCI with notice regarding any network change that will affect GCI's performance or ability to provide service of ATU;s interoperability with other service providers. This notice is required to be given to GCI under the interconnection agreement pursuant to Commission regulations. Pursuant to Section 51 of the Commission's rules, an ILEC "must provide public notice regarding any network change that: (1) will affect a competing service provider's performance or ability to provide service; or (2) will affect the incumbent ILEC's interoperability with other service providers."[19] The content of the notice and the timing of the notice is laid out in the Commission's rules.[20] ATU has never given GCI the required notification even through GCI has repeatedly informed ATU of these requirements.

Specifically, ATU has not given notice of cable cuts, transferring service from a wire center to a remote service area or the various OSS changes and developments. ATU has agreed to monthly meetings regarding their delinquency on network notification issues but they are not complying with the Commission's rules. ATU should not be given any flexibility until

[19]47 CFR 51.325(a).

[20]47 CFR 51.325-335.

they fully comply with these rules.

The acts by rate-of-return ILECS to thwart competition must be evaluated on a case by case basis. Therefore, the Commission should not grant these carriers any deregulatory measures, including pricing flexibility, until they can demonstrate that effective competition in the switched access and overall local exchange market exists. Otherwise, the ILECs will be able to use their market power to exclude or thwarted competition.

II. Rate of Return ILECs Have Other Choices

Many ILECs plead that they need to have flexible options to face potential competition but insist that they receive full rate base compensation. However, these carriers have many options they can choose today without the Commission giving benefits such as pricing flexibility to companies that do not face effective competition. Any ILEC can choose to be a price cap carrier. Any ILEC can choose to get out of the NECA common line (CL) or traffic Sensitive (TS) pool. These actions would give the ILECs more control over their costs and rates. However, the Commission should not allow the companies to manipulate the process by allowing only certain portions of a company to exit the pool at any given time as requested by some commenters. This would cordon off many areas to competition, not encourage competition. It is obvious that these companies do not want to take these steps. For example, at the APUC, ATU has opposed a proposal that would require it to get out of the pooling arrangement for non-traffic sensitive costs if it faces competition. It appears that they would like to selectively

choose pricing flexibility, perhaps to the benefit of ATU-LD, their wholly owned affiliate that provides long distance.[21]

III. Competitors Must Be Allowed To Avoid Unnecessary Charges

Rate-of-return ILECs are requesting pricing flexibility while retaining anticompetitive provisions in their access tariffs. For example, ATU's Interstate Access Tariff F.C.C. No. 5 currently forces all carriers to incur entrance facility charges for trunks, even if carriers are collocated and the trunks are provisioned over the connecting carriers fiber. ATU's entrance facility charge was designed to recover the transport costs from the interexchange carrier's point of presence (POP) to ATU's serving wire center. ATU's outside plant associated with the interconnecting trunks makes up the greatest portion of the costs assigned to the rate element. GCI has installed fiber to each of ATU's wire centers and is collocated at each of the wire centers. Unfortunately, when ATU finally facilitates interconnection and GCI is able to trunk over its fiber for interconnection, ATU will still collect the entrance facility charge. If ATU is given the rate flexibility requested, then ATU should be required to eliminate the entrance facility bottleneck and allow carriers to avoid this charge.

The entrance facility charge is a barrier to competition. In its pleading, ATU argues that "one of ATU's largest customers, AT&T Alascom is considering switching to ATU's facilities based competitor-General Communication, Inc.(GCI). GCI is able to offer

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[21]ATU can enter the long distance business prior to complying with the requirements of Section 251 of the Act.

volume and term discounts and other pricing incentives to AT&T Alascom."[22] GCI is attempting to compete with ATU for Alascom's business, but with the bottleneck rate structures like the entrance facilities charge, there is no incentive for Alascom to use GCI's fiber facilities to access ATU because they still would pay the ATU entrance facility charge. The concept of a facilities based competitive access provider is extremely restricted when rate elements of the incumbent local exchange carrier are unavoidable.

IV. The Commission Should Not Mandate Recovery of ILEC Historical Embedded Costs

The Commission should not imply in any way in this proceeding that the ILECs will be reimbursed for the difference between revenue generated by access charges based on embedded costs versus access charges based on forward looking costs. The ILECs have supported full cost recovery, while at the same time arguing for flexibility that will allow them to charge anything they want. GCI opposes any special recovery mechanisms.

As outlined in the comments of the State Advocates in the access charge reform proceeding for price cap ILECs,

> Utilities are not entitled to recover costs that have become uneconomic due to competitive pressures. In Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), the Supreme Court held that a "scheme" of utility regulation does not "take" property simply because it disallows recovery of capital investments that are not "used and useful in service to the public," even where it excludes costs that were prudent and reasonable when made. 488 U.S. at 301-02.

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[22]Petition at 2.

GCI agrees that the ILECs cannot be made whole in a competitive environment.

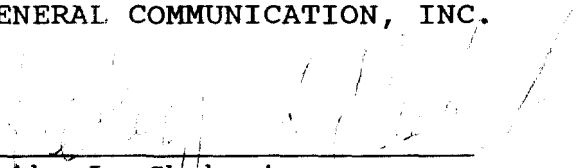
Conclusion

Many companies are in the process of negotiating or arbitrating an interconnection agreement with many ILECs. Many companies who have interconnection agreements are having are difficult time forcing the ILEC to live up to those agreements. However, none has satisfied fully the move to true competition. Just because an agreement has been signed by both parties does not ensure proper implementation by the ILEC. The Commission should reward ILECs that support a competitive environment through their actions with measured deregulation over time. The Commission cannot predetermine that deregulatory moves should be implemented until it can see the marketplace actually work.

Therefore, the Commission should implement access charge reform for rate-of-return ILECs and then determine based on the marketplace conditions of the particular company if they should allow pricing flexibility or other deregulatory measures.

Respectfully submitted,

GENERAL COMMUNICATION, INC.



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September 17, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed September 17, 1998.

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CERTIFICATE OF SERVICE

I, Kathy L. Shobert, hereby certify that true and correct copies of the proceeding comments were served by first class mail, postage prepaid to the parties listed below.

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